

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

ROBERT HURST,

Respondent

v.

NISSAN NORTH AMERICA, INC.

Appellant

DOCKET NUMBER WD78665

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 22, 2016

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Jack Richard Grate, Judge

Appellate Judges:

Division Three
Joseph M. Ellis, Sr. J., Presiding, Thomas H. Newton, and James Edward Welsh, JJ.

Attorneys:

John Cowden, Kansas City, MO
David Eisenberg, Kansas City, MO

Counsel for Appellant
Co-Counsel for Appellant

Attorneys:

Kevin Stanley, Independence, MO
Lawrence Mook, Kansas City, MO
Michael Blanton, Denver, CO

Counsel for Respondent
Co-Counsel for Respondent
Co-Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**ROBERT HURST, Respondent, v.
NISSAN NORTH AMERICA, INC., Appellant**

WD78665

Jackson County

Before Division Three Judges: Ellis, Sr. J. Presiding, Newton, and Welsh, JJ.

When certain Infiniti FX vehicles developed dashboard bubbling, Robert Hurst, on behalf of himself and others similarly situated, filed a second amended petition seeking damages under the Missouri Merchandising Practices Act (MMPA) and seeking certification of a class action lawsuit against Nissan North America, Inc. (Nissan). Hurst claimed that Nissan violated the MMPA by making representations regarding the Infiniti FX vehicle that were not in accord with the facts regarding the quality of the vehicle or by making representations regarding the Infiniti FX that tended to create a false impression regarding the quality of the vehicle. The circuit court certified the class and held a jury trial. Nissan appeals from the circuit court's judgment awarding \$2000 in damages to each class plaintiff and \$1,819,785 in attorney's fees. Although Nissan asserts numerous points on appeal, its first point is dispositive. Nissan contends that the circuit court erred in denying its motions for directed verdict and JNOV because Hurst failed to make a submissible case under the MMPA in that the alleged misrepresentations were not actionable statements of fact but were merely inactionable puffery.

Reversed and remanded

Division Three holds:

The circuit court erred in denying Nissan's motion for judgment notwithstanding the verdict because Hurst failed to show that Nissan made an actionable misrepresentation in connection with the FX's advertising. The statements relied upon by plaintiff were not actionable statements of fact as required by the MMPA. As to attorney's fees, the MMPA authorizes attorney's fees to the prevailing party. Because Hurst and the class he represents are no longer the prevailing party, attorney's fees are no longer authorized.

Opinion by James Edward Welsh, Judge

March 22, 2016

* * * * *

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.
--